IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IB – 269/ND/2021

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. SPACEWOOD FURNISHERS PVT. LTD.
Having its registered office at:
T-48, Midc, Hingna road,
Nagpur, 440016, Maharashtra

...... Applicant/Operational Creditor

VERSUS

M/s. PRATEEK INFRAPROJECTS INDIA PRIVATE LIMITED
Having Its Registered Office at:
Shop No.7, Ground Floor, CSC Plot,
Rishabh Ipex Mall, Patparganj,
Near Vidyut Nikunj Society,
East Delhi-110092

..... Respondent/Corporate Debtor

Order Pronounced On: 23.01.2024

CORAM:
SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant: Mr. Garvesh Kabra, Mr. Ahmer Shaikh, Mr. Avanish Deshpande, Advocates.

For the Respondent: Mr. Abhishek Anand, Mr. Navneet Thakram, Ms. Harshita Gulati, Advocates.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Spacewood Furnishers Pvt. Ltd., the Applicant/Operational Creditor herein, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. Prateek Infraprojects India Private Limited, the Respondent/Corporate Debtor, on the ground that the Corporate Debtor defaulted/failed to clear the outstanding amount of Rs. 2,26,10,512/- (Rupees Two Crore Twenty-Six Lakh Ten Thousand Five Hundred Twelve Only) along with interest at 18% per annum. The ***Date of Default*** is 02.02.2020.

2. **Submissions of the Operational Creditor:**

i. M/s. Spacewood Furnishers Pvt. Ltd. i.e. the Operational Creditor is a company incorporated on 18.06.1996 under the Companies Act, 1956 CIN: U36100MH1996PTC100296 having its registered office at T-48, Midc, Hingna Road, Nagpur, 440016, Maharashtra. The Operational Creditor is engaged in the business of manufacturing & sales of various furniture items.

ii. The Corporate Debtor ordered certain materials for purchase and installation of various materials for its real estate projects. Thus, a contract came into existence. In pursuance thereof, the Corporate Debtor issued various purchase orders for supply of materials, which had been accepted by the Operational Creditor. As per the demands and requirements of the Corporate Debtor, the Operational Creditor issued tax invoices for the supply and installation of material which were accepted by the Corporate Debtor.

iii. The Corporate Debtor, during the period of 17.10.2017 to 10.01.2019, vide 12 different purchase orders had requested for goods and services from the Operational Creditor. In pursuance of the purchase orders, the Operational Creditor had provided Corporate Debtor with the goods and services and had issued 201 invoices to the Corporate Debtor against which no dispute was ever raised by Corporate Debtor.

iv. The Operational Creditor made requests for payment of Rs. 2,90,34,851/- (Rupees Two Crore Ninety Lakhs Thirty-Four Thousand Eight Hundred and Fifty-One Only) to be paid within 10 days of the receipt of goods. However, the Corporate Debtor failed to pay the entire amount due except partial repayment which was duly credited in the account.

v. The Corporate Debtor had informed in the month of February, 2020 about payment made of Rs. 5,00,000/- (Rupees Five Lakh Only) which had been reconciled and appropriated in accounts. The Corporate Debtor made part payment of Rs. 31,31,775/- (Rupees Thirty-One Lakh Thirty-One Thousand Seven Hundred Seventy-Five Only) which was received on 18.01.2020 and further part payment of Rs. 26,91,344/- (Rupees Twenty-Six Lakh Ninety-One Thousand Three Hundred and Forty-Four Only) on 10.07.2020 and thus, an amount of Rs.58,23,119/- (Rupees fifty-eight lakh twenty-three thousand one hundred and nineteen only) was paid in addition of said reconciled amount of Rs. 5,00,000/- (Rupees five lakh only) which had been credited in the accounts. However, an amount of Rs. 2,27,11,732/- (Rupees two crore twenty-seven lakh eleven thousand seven hundred and thirty-two only) is still outstanding towards principal.

vi. The corporate debtor had acknowledged the of liability to the extent of Rs.2,20,71,123/- (Rupees two crore twenty lakh seventy-one thousand and one hundred and twenty-three only) vide email dated 25.02.2020 by sending a copy of the ledger which showed a balance of Rs. 1,93,50,041/- to be paid to the Operational Creditor.

vii. The Operational Creditor had issued a notice dated 16.01.2020 and a legal notice dated 23.01.2021 to the Corporate Debtor demanding payment of the aforementioned due amount. However, the Corporate Debtor did not pay the unpaid amount and neither replied nor raised any objection regarding the same. The Corporate Debtor never objected or denied or disputed the same.

viii. The Corporate Debtor, vide its reply dated 18.07.2022, raised certain objections and contended that the present application is not admissible due to there being pre-existing dispute without providing any evidence in support thereof. The Corporate Debtor has never denied the unpaid debt nor raised any dispute regarding the existence of the amount of debt, the quality of goods or services, or the breach of a representation or warranty.

ix. The Corporate Debtor has only referred to an email dated 04.03.2020 sent by the Corporate Debtor to the Operational Creditor regarding 18 invoices of sale and installation amounting to Rs.25,04,550/-, requesting the Operational Creditor to resubmit the invoices as some invoices could not be found/located while other invoices could not be processed due to being pre-GST period. The above referred email does not raise any objection or dispute regarding the existence of the amount of debt or, the quality of goods or services or, the breach of a representation or warranty as required under sec 5(2) of IBC. The referred invoices were already resubmitted to the Corporate Debtor on 09.02.2020 which was again conveyed to them vide email 28.02.2020.

x. The Corporate Debtor didn't show some invoices amount in its ledger to pressurize Operational Creditor for issuance of fresh invoice of current date for supplies already made but the facts remain that said goods were already delivered to the Corporate Debtor and had been utilized for their need. The

Corporate Debtor had agreed to account the balance of Rs. 3,37,749/- (Rupees Three Lakh Thirty-Seven Thousand Seven Hundred and Forty-Nine Only) which was not acknowledged in aforesaid acknowledgement sent through email dated 25.02.2020.

xi. The Corporate Debtor without supplying details, informed that Corporate Debtor had made payment towards TDS and withhold certain amount as retention amount and thus, claimed to have issued debit note of total Rs. 4,89,654/- (Rupees Four Lakh Eighty-Nine Thousand Six Hundred Fifty-Four Only). However, till date the debit note is not supplied and hence, Operational Creditor could not credit said amount. The Operational Creditor has verified from 26AS Form available on Income Tax website and came to know that out of said amount of Rs. 4,89,654/- (Rupees Four Lakh Eighty-Nine Thousand Six Hundred Fifty-Four Only) an amount of Rs. 1,01,220/- (Rupees One Lakh One Thousand Two Hundred Twenty Only) has been paid towards TDS amount and hence, Operational Creditor has debited said amount from aforesaid outstanding balance. Thus, after reconciliation of account and appropriation of said TDS amount of Rs. 1,01,220/- (Rupees One Lakh One Thousand Two Hundred Twenty Only) there is a balance principal outstanding of Rs 2,26,10,512/- (Rupees Two Crore Twenty-Six Lakh Ten Thousand Five Hundred Twelve Only).

xii. The Operational Creditor had issued a legal notice to Corporate Debtor on 23.01.2021 for amount payable of Rs 2,26,10,512/- (Rupees Two Crore Twenty-Six Lakh Ten Thousand Five Hundred Twelve Only). The Corporate Debtor has failed to make the payment.

3. <u>Submissions of the Corporate Debtor:</u>

i. M/s. Prateek Infraprojects India Private Limited i.e. the Corporate Debtor is a company incorporated on 06.01.2011 under the Companies Act, 1956 CIN:

U70101DL2011PTC212289 having its registered office at Shop No.7, Ground floor, CSC Plot, Rishabh Ipex mall, Patparganj, near Vidyut Nikunj society, East Delhi-110092. The Corporate Debtor is engaged in the business of off-shore drilling for oil and gas exploration.

ii. The Operational Creditor had made various material concealments with respect to pre-existing dispute being raised by the Corporate Debtor. The Corporate Debtor vide email dated 04.03.2020 categorically asked the Operational Creditor to produce the receiving's pertaining to the alleged bills that have been raised against the supplies along with all supporting documents substantiating the claim, however no such documents have been furnished by the Operational Creditor till date.

iii. The Operational Creditor under the garb of having a running account with the Corporate Debtor had raised false and frivolous bills without producing any evidence confirming the receipt of the alleged goods to the Corporate Debtor. It was mutually agreed between the parties that the goods supplied by the Operational Creditor was defective. The Corporate Debtor had several times asked the Operational Creditor to take back the goods which were defective. However, they failed to take back the goods and the Corporate Debtor had arranged for disposal of the defective goods. The Corporate Debtor sent a communication for not raising the bills of defective goods and the Operational Creditor had agreed for the same but despite of such agreement for waiver of 15 to 20 percent of defective goods for which they will not raise the bills but, the bills were raised.

iv. The Operational Creditor has failed to produce any evidence with respect to the invoices and the same is not being reflected in the ledger of the Corporate Debtor. The goods which were supplied by the Corporate Debtor was defective in nature which was duly communicated to the Operational Creditor to which it was agreed that no bills will be raised against the said defective goods, but the Operational Creditor had issued false bills.

v. The Operational Creditor had issued a Notice dated 23.01.2021 seeking recovery of Rs. 2,26,10,512/- since bills were raised. The Corporate Debtor had made all the payments except for the defective goods. The Operational Creditor has itself raised is a dispute qua the alleged goods delivered to the Corporate Debtor which is clearly evident from the notice dated 23.01.2021. The relevant extract is reproduced herein below: -

> *"It appears that you Noticee No.1 have not booked some invoices amount in your ledger to pressurize my client for issuance of fresh invoice of current date for supplies already made; but fact remains that said goods are already delivered to you Noticee No.2 and you Noticee No.1 have utilized for your need"*

vi. There is a pre-existing dispute between the parties as the Operational Creditor has miserably failed to furnish any proof substantiating the proof of delivery of the alleged goods. That it may also be further noted that the Corporate Debtor had asked the Operational Creditor to furnish fresh bills for installation as the said bills had been issued pre-GST and the same cannot be considered as on date under the present legal regime and there were further disputes in respect to the said defective goods which was not resolved timely between the parties.

vii. The Operational Creditor has misled the Court by stating that by way of emails dated 25.02.2020 and 04.03.2020 the Corporate Debtor has acknowledged its liability whereas from a bare perusal of the said emails there appears to be a pre-existing dispute. The entire amount of the goods has been received.

viii. The Corporate Debtor has paid the entire amount for the goods which have been received. The bills raised by the Operational Creditor are not genuine and has pre-existing disputes between the parties on the ground that defective goods were supplied to the Corporate Debtor and therefore the Corporate Debtor has paid all the amount except for the defective goods.

4. Analysis and Findings

i. We have heard the Ld. Counsel appearing for both parties and also perused the records.

ii. The Operational Creditor has claimed an amount of Rs. 2,26,10,512/- (Rupees Two Crore Twenty-Six Lakh Ten Thousand Five Hundred Twelve Only) along with interest at 18%. The entire claim is based on invoices issued by the Operational Creditor to the Corporate Debtor.

iii. The Corporate Debtor contended that prior dispute existed relating to wrong/unclear invoices before the issuance of the Section-8 demand notice. The Operational Creditor had issued demand notice on 23.01.2021. The Corporate Debtor has placed on record an email dated 04.03.2020 to show that dispute with respect to wrong/unclear invoices were raised. The Corporate Debtor had informed the Operational Creditor that the bills qua which the demand is being raised is not available with the Corporate Debtor and further requested to provide the acknowledgement of the said bills. The e-mail dated 04.03.2020 is extracted below:

> *"Dear Sir,*
> *This is to notify & request you about two things regarding the bills raised against installation and supply respectively.*
>
> 1. *Bills raised against installation:*
>   *As per the mail sent by Pushkar Sir, the invoices that have been pending with him for installation pertains to PRE-GST period i.e. of*

VAT component of which we cannot accept & process anyhow under GST regime.

2. *Bills raised against supply (Highlighted in mail attachment):*

   We could not find any records of these bills anywhere in our books/erp/dmr, thus, request you to provide us with the receiving of this bills & other due supporting's.

   Hence, we request you to consider & acknowledge the above two points & do the necessary/discuss further."

iv. From perusal of the email dated 04.03.2020 it is evident that the Corporate Debtor has informed the Operational Creditor that the invoices which were sent and pending with the Corporate Debtor pertain to Pre-GST period and those invoices cannot be taken into consideration at present particularly under New GST regime. Further the Corporate Debtor specifically asked the Operational Creditor to furnish the invoices which has not been done by the Operational Creditor. This shows that the Corporate Debtor had raised a pre-existing dispute vide the said email.

v. It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code.

vi. In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has been able to raise a plausible contention regarding the pre-existence of "dispute" between the parties.

5. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

i. The Application bearing **IB-269/ND/2021** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed.**

ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)